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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/539,570	06/17/2005	Jean-Philippe Pascal	273838US0PCT	4493

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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314		

EXAMINER	
DEES, NIKKI H	

ART UNIT	PAPER NUMBER
4174	

NOTIFICATION DATE	DELIVERY MODE
10/18/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/539,570

Applicant(s)

PASCAL ET AL.

Examiner

Nikki H. Dees

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>29 November 2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 11-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Misato et al. (4,599,233) in view of Applying Pesticides Correctly (The Ohio State University, 1992) and Knight (5,439,690).

3. Misato et al. teach a fungicide composition comprising sodium bicarbonate (Abstract). They state that their composition may contain 10-100 percent of the effective components (col. 5 lines 42-43). They go on to state that their composition may also contain a carrier such as silica (col. 5 line 20). This reads on Applicants' claims 11, 15, and 18.

4. Misato et al. disclose that their composition may be sprayed onto plant material (col. 8 lines 18-20), as well as fruits and vegetables (col. 3 lines 20-21). They state that their composition will not have adverse effects if it were to be consumed by humans (col. 3 lines 23-25). This renders Applicants' claim 16 obvious. By being safe for human consumption, it is inherent that this composition not contain neurotoxic substances.

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5. Misato et al. are silent as to the use of their composition as an acaricide.

However, patentability is dependent on the composition, not the intended use. The composition taught by Misato et al. as a fungicide would also function as Applicants' claimed composition as a fungicide, acaricide and insecticide given that the active ingredient in both compositions is the same. This reads on Applicants' claims 17 and 20.

6. Misato et al. are silent as to cereals being treated with their composition, and to their composition being sprayed on silo walls. They are also silent as to the particle size of the powder in their composition, and the specific use of silica gel.

7. Regarding claim 12, Applying Pesticides Correctly teaches that a wettable powder formulation of a pesticide will leave more pesticide on the surface (p. 72 col. 2). They go on to state that spaces such as silos may be treated (p. 72 col. 2). Additionally, they speak to the covering of surfaces with pesticides (p. 73 col. 2).

8. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have sprayed the composition taught by Misato et al. onto surfaces as taught in Applying Pesticides Correctly in order to coat the inside surface of a silo so that the pesticide may come into contact with cereals stored in the silo.

9. Regarding claims 13 and 14, Knight teaches a non-toxic pesticide comprising an alkali metal bicarbonate (col. 1 lines 5-10, 65-66). One embodiment comprises sodium bicarbonate (col. 3 lines 67-67). Particle size for the invention is preferably under 100 microns (col. 3 lines 57-58).

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10. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the particle size taught by Knight in the composition taught by Misato et al. in order to produce a composition with a particle size best suited for coating the intended target.

11. Regarding combating acarids in the storage of cereals, as the composition taught by Misato et al. is used on fruits and vegetables, it would have been obvious to one of ordinary skill in the art to extend the application of the fungicide/insecticide/acaricide to cereals as well.

12. In regard to claim 19 and the use of silica gel in particular, it would have been obvious to one of ordinary skill in the art to have selected silica gel for use in the invention of Misato et al. as it is widely known and readily available desiccant. One skilled in the art would also have been able to adjust the amount of silica gel used in the invention to result in a product with the most desirable properties for the intended application.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nikki H. Dees whose telephone number is (571) 270-3435. The examiner can normally be reached on Monday-Friday 7:30-5:00 EST (first Friday off).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, D. Lawrence Tarazano can be reached on (571) 272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nikki H. Dees
Examiner
Art Unit 4174


Gwenolyn Blackwell
Primary Examiner